

Hon Andrew Little

Minister of Justice

Minister for Courts

Minister for Treaty of Waitangi Negotiations

Minister Responsible for the NZSIS

Minister Responsible for the GCSB

Minister Responsible for Pike River Re-entry



27 JUN 2019

Dear Mr Harbrow

Official Information Act 1982 request – review of the OIA and proactive releases

I refer to your request of 18 September 2018 seeking information under the Official Information Act 1982 ("the Act") for:

"all advice and communications on plans for a review of the OIA, including covering proactive releases under s48."

I have revisited my decision with regards to the **attached** State Services Commission Report dated 17 May 2018 on possible legislative reform of the Act (attachment 1 of document 6 of my response of 29 January 2019). I have done so in light of the passage of time and because the consultation process has progressed since September 2018.

The document releases some information that was previously withheld, with redactions for information which continues to be withheld under:

- section 9(2)(a) of the Act to protect the privacy of individuals; and
- section 9(2)(g)(i) of the Act to maintain the effective conduct of public affairs through free and frank expression of opinions by officials.

The information I continue to withhold is subject to the Ombudsman's ongoing investigation.

Yours sincerely

Hon Andrew Little
Minister of Justice

SSC REPORT

STATE SERVICES COMMISSION
Te Kaitiaki Take Kōwhiri



Possible legislative reform to the Official Information Act 1982

Date: 17 May 2018

Report No: SSC2018/519

Contact: Catherine Williams, Deputy Commissioner, Integrity, Ethics and Standards

s 9(2)(a)

Telephone: [REDACTED]

IN-CONFIDENCE

	Action Sought	Deadline
Hon Clare Curran Associate Minister of State Services (Open Government)	Send the report to Minister Hipkins and Minister Little.	17 May 2018
Hon Chris Hipkins Minister of State Services	Discuss the proposals in this report.	Meeting on 22 May 2018, 8.00 - 8.30 pm
Hon Andrew Little Minister of Justice	Discuss the proposals in this report.	Meeting on 22 May 2018, 8.00 - 8.30 pm

Enclosure: Yes (attached)

Executive Summary

- 1 This report proposes targeted consultation on the Official Information Act 1982 (OIA). This will assist Ministers to decide whether or not they consider there is a case to initiate a formal review of the OIA.
- 2 The attachments provide information on:
 - 2.1 the Law Commission's 2012 recommendations for reform of official information law and subsequent work
 - 2.2 progress on work to improve agencies' compliance with the letter and spirit of the OIA
 - 2.3 four possible approaches to OIA reform, and
 - 2.4 information Minister Curran used for Ministerial consultation on a proactive release policy.

Recommended Action

- 3 We recommend that you:
- a **agree** to targeted consultation on the Official Information Act 1982 to inform consideration on whether or not there is a case to initiate a formal review of the Act.

Agree/disagree

Hon Clare Curran

Associate Minister of State Services (Open Government)

Hon Minister Hipkins

Minister of State Services

Hon Andrew Little

Minister of Justice

SSC Report: Possible legislative reform to the Official Information Act 1982

Purpose of Report

- 4 This report proposes targeted consultation on the Official Information Act 1982 (OIA). This will assist Ministers to decide whether or not they consider there is a case to initiate a formal review of the OIA.

Background

- 5 There have long been calls in New Zealand for a review of, or amendment to, the OIA. This means we have a lot of information available on the how the OIA works. For example:
 - 5.1 In 2012 the Law Commission undertook a review of official information legislation. The report recommendations included significant legislative change but the then Government favoured largely operational improvements (refer to Attachment A for Law Commission's recommendations and work to date).
 - 5.2 The annual public engagement on the initiatives New Zealand might progress in its Open Government Partnership (OGP) Action Plan has included concerns on the statutory framework and the operation of the OIA. The OIA is coming through again during discussion of the 2018/20 Action Plan.
 - 5.3 There are growing calls by media, academics and other commentators for the OIA to be reviewed.
 - 5.4 In response to Dame Beverly's Wakem's 2015 investigation into government agencies' OIA practices, the State Services Commission,¹ the Office of the Ombudsman, and government agencies have been working on operational improvements (refer to Attachment B for the current state of the programme).
 - 5.5 On 27 November 2017, Dr Bryce Edwards authored a column for the Newsroom website. The article started the Campaign for Open Government calling for "a coalition of activists, journalists, academics and the public, to join together to encourage the new government to fix the OIA system."
- 6 Ministers have also discussed whether the OIA should be amended to provide Ministers with protections from civil and criminal liability when they make proactive release decisions (something the 2012 Law Commission report was against).
- 7 The Ministry of Justice, with the support of the State Services Commission, has drafted four possible approaches for legislative reform (refer to Attachment C).

Proposal

- 8 To round out the information already available we propose that targeted consultation take place to understand current positions on the OIA.

¹ The State Services Commissioner has been delegated the functions under section 46 of the OIA by the Secretary for Justice. This function includes providing advice and guidance to agencies to act in accordance with the OIA.

People with specific expertise in the law

- 9 We propose that the following people who have specific expertise be approached for their views:

ss 9(2)(a) and
9(2)(g)(i)

Who	Why
Mr Peter Boshier, Chief Ombudsman	Handles all complaints under the OIA, sets precedents.
[REDACTED]	[REDACTED]
Mr John Edwards, Privacy Commissioner	Handles complaints under the Privacy Act and issues codes so that personal information is protected and respected.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Sir Geoffrey Palmer	Subject matter expert. Former Prime Minister. Former President of the Law Commission.
The Hon Sir Douglas White QC	President of the Law Commission
[REDACTED]	[REDACTED]

Other individuals and groups

- 10 The views from those with expertise in the law, could be supplemented by other New Zealanders as discussed below.

New Zealanders engaged with the developing our next Open Government Partnership Action Plan

- 11 New Zealanders are providing their thoughts online (<http://www.ogp.org.nz/our-conversation/topics-of-conversation/>) and through social media to suggest initiatives that would make New Zealand more open. Others are registering to attend workshops on the development of New Zealand's 2018/2020 OGP Action Plan. Ideas that have been submitted to date include reform of official information laws.

The Open Government Partnership Expert Advisory Group

- 12 This group provides advice to the State Services Commission from the perspective of civil society on open government matters. The members are:

Who	Background
Mr Anaru Fraser	Mr Fraser is the General Manager of Hui E! Community Aotearoa an agency that seeks to promote, strengthen and connect the Community Sector. Mr Fraser has over 15 years' international policy development experience in the United Nations in areas including food security and malnutrition and environmental and cultural rights related to Indigenous Peoples and civil societies.
Mr Te Raumawhitu (Te Rau) Kupenga	Mr Kupenga is of Ngati Porou descent. Originally a litigation lawyer, Mr Kupenga is currently the principal in his consulting firm Te Amokura. He has been a senior leader at the Ministry for the Environment and the Ministry of Education. He holds a number of governance roles.
Professor Miriam Lips	Professor Lips is Chair in the Digital Government School of Government Victoria University of Wellington. Since 2015 Professor Lips has been leading and undertaking a five-year research programme on 'Government and Democracy in the Digital Age' in partnership with the Department of Internal Affairs, Inland Revenue Department, the Ministry of Education and Datacom.
Mr Scott Miller	Mr Miller is the chief executive of Volunteering New Zealand and has experience working in private, public and other NGO roles. He speaks internationally on volunteering, democracy, and open government.
Mr Phil Newman	Mr Newman is the International Programmes Director at Tearfund (a New Zealand based aid and development organisation, serving communities across Africa, Asia and South America). He moved from working in finance to international aid & development, governance here and in Australia.
Ms Rachel Roberts	Formally a journalist and radio producer for National Radio, Ms Roberts works with agencies across sectors on strategic leadership, strategy development, implementing projects, advocacy and communications.

Ms Suzanne Snively	Chair Transparency International New Zealand. Ms Snively specialised as an economic strategist at PWC. She has 30 years' experience as a company director on public and private Boards.
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Journalists

- 13 There is no professional journalist grouping that represents the media. Given this some or all the following, who are covered by the Press Council complaints process, could be approached for a discussion on the OIA.
- 13.1 Otago Daily Times, an independent newspaper that is locally owned.
 - 13.2 Stuff.
 - 13.3 NZ Herald.
 - 13.4 TVNZ.
 - 13.5 Media works (whose ownership includes Newshub, TV3, and Newstalk ZB).
 - 13.6 Māori Television.
 - 13.7 RNZ.
 - 13.8 Richard Harmon, who has 35 years of political journalism experience and now publishes online through his website Politik.

Other bloggers and other commentators

- 14 Other bloggers and commentators (to the extent that this group has not been covered through the OGP conversations) could include:

ss 9(2)(a)
and 9(2)(g)(i)

[REDACTED]

[REDACTED]

- 14.2 [REDACTED] owner of the blog *No Right Turn*.

[REDACTED]

[REDACTED]

- 14.4 Open New Zealand who own www.fyi.org.nz. This website (supported by the NZ Herald) that makes it easy for the public to request and share official information.

- 15 Subject to the information gathered, some wider workshops and / or online tools could be used to test the issues raised.

Resourcing

- 16 The targeted consultation would need to be led by the Ministry of Justice, who administer and lead policy advice on the OIA, with the support of the State Services Commission.
- 17 If a subsequent decision is made to review the OIA, the expectation is that the Ministry of Justice will lead the review, with support from the State Services Commission.

Timeframe

- 18 If you agree to the targeted consultation the Ministry of Justice and the State Services Commission will come back to you with a proposed timeframe and resourcing requirements.

Consultation

20 The Ministry of Justice was consulted on this report.